IN THE

Supreme Court of the United States

October Term, 1976

No. 76-58

SAMUEL H. SLOAN, SAMUEL H. SLOAN & CO.,
Petitioners,

against

SECURITIES & EXCHANGE COMMISSION, UNITED STATES OF AMERICA AS THE SECURITIES & EXCHANGE COMMISSION, NATIONAL QUOTATION BUREAU, INC., BUNKER RAMO CORP., NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC., DISCLOSURE, INC., NATIONAL CLEARING CORP.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENT DISCLOSURE, INC. IN OPPOSITION

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Opinions Below

The oral decision of the District Court (Appendix D of the Petition) and the opinion of the Court of Appeals for the Second Circuit as amended (Appendices A and B of the Petition) are not officially reported.

Jurisdiction

The jurisdictional requirements are adequately set forth in the Petition.

Statutes Involved

The pertinent provisions of the Sherman Act (15 U.S.C. §§ 1 and 2) and of the Clayton Act (15 U.S.C. § 14) are set forth herein as Appendix I.

Question Presented

Whether the Amended Complaint states a cause of action as against respondent Disclosure, Inc. under Sections 1 and 2 of the Sherman Act and Section 3 of the Clayton Act.

Statement of the Case

Disclosure, Inc. has a contract with the Office of Records and Services of the Securities and Exchange Commission (the "S.E.C."). By the terms of this contract, Disclosure, Inc. performs duplicating services for the S.E.C., *inter alia*. Petitioner's Amended Complaint alleges that these facts constitute violations of the federal antitrust laws as set forth above.

ARGUMENT

As to respondent Disclosure, Inc., the sole issue in this case is whether the mere allegation of an exclusive contract between Disclosure, Inc. and the federal government is sufficient to state a claim under the federal antitrust laws. Disclosure, Inc. contends that this issue is a narrow one and does not warrant review by this Court on certiorari. The most cogent support for this position can be found in the Statement of the Case set forth in the Petition itself. Disclosure, Inc. is nowhere mentioned therein save for the fact that it holds a contract to perform certain services for the S.E.C. In fact, that portion of the petitioner's State-

ment of the Case which discusses the one count of the Amended Complaint purporting to state a claim against respondent Disclosure, Inc. is conspicuously devoid of any mention of Disclosure, Inc.

The petition for certiorari is patently frivolous as to the claims made against respondent Disclosure, Inc. Respondent Disclosure, Inc. relies on, incorporates by reference herein and respectfully refers this Court to its brief on appeal to the Second Circuit (annexed hereto as Appendix II) and the opinions of both the District Court and the Court of Appeals for the Second Circuit (Appendices D and A of the petition respectively).

In sum, the opinions below are clearly correct. The petition asserts no conflict of decision nor important questions of federal law as to respondent Disclosure, Inc. Hence, there is no basis for the granting of review by this Court on certiorari.

CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari should be denied.

Dated: New York, New York
August 17, 1976.

Respectfully submitted,

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APPENDICES

APPENDIX I

The Sherman Act—15 U.S.C.

"§1. Trusts, etc. in restraint of trade illegal; exception of resale price agreements; penalty

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal: *Provided,* That nothing contained in sections 1 to 7 of this title shall render illegal, contracts or agreements prescribing minimum prices for the resale of a commodity which bears, or the label or container of which bears, the trademark, brand, or name of the producer or distributor of such commodity and which is in free and open competition with commodities of the same general class produced or distributed by others, when contracts or agreements of that description are lawful as applied to intrastate transactions, under any statute, law, or public policy now or hereafter in effect in any State, Territory, or the District of Columbia in which such resale is to be made, or to which the commodity is to be transported for such resale, and the making of such contracts or agreements shall not be an unfair method of competition under section 45 of this title: *Provided further,* That the preceding proviso shall not make lawful any contract or agreement, providing for the establishment or maintenance of minimum resale prices on any commodity herein involved, between manufacturers, or between producers, or between wholesalers, or between brokers, or between factors, or between retailers, or between persons, firms, or corporations in competition with each other. Every person who shall make any contract or engage in any combination or conspiracy declared by sections 1 to 7 of this title to be illegal shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall

be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court."

"§ 2. Monopolizing trade a misdemeanor; penalty

Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court."

The Clayton Act—15 U.S.C.

"§ 14. Sale, etc., on agreement not to use goods of competitor

It shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies, or other commodities, whether patented or unpatented, for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies, or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement, or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce."

APPENDIX II

Brief of Disclosure, Inc. as Defendant-Appellee

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Appendix II

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SAMUEL H. SLOAN
SAMUEL H. SLOAN & CO.,

Plaintiffs,

against

SECURITIES AND EXCHANGE COMMISSION, UNITED STATES OF AMERICA as the SECURITIES & EXCHANGE COMMISSION, NATIONAL QUOTATION BUREAU, INC., BUNKER RAMO CORP., NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC., DISCLOSURE INC., and NATIONAL CLEARING CORP.,

Defendants.

BRIEF OF DISCLOSURE INC., AS DEFENDANT-APPELLEE

Preliminary Statement

Disclosure Inc. ("Disclosure") is defendant-appellee as to that portion of the Judgment (A 270)* rendered below by Judge Thomas P. Griesa dismissing plaintiffs' Amended Complaint against it without leave to replead.

Issues Presented

Did the Court below correctly exercise its discretion to dismiss *sua sponte* the Amended Complaint as against Disclosure?

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* All references designated "A" are to pages of the Joint Appendix on this appeal.

Appendix II

The Nature of the Case and Proceedings Below

On June 27, 1974, plaintiff Samuel H. Sloan commenced this action by filing a Complaint against the Securities and Exchange Commission (the "S.E.C.") seeking an order adjudging the Securities Exchange Act of 1934 and the rules promulgated thereunder unconstitutional, and an order directing that Sloan be "permitted to list any security by name in the pink sheets" and "to buy and sell any security." (A 8). At a pretrial conference held on September 18, 1974, plaintiff Samuel H. Sloan was directed to amend his Complaint by October 2, 1974, so as to cure the vagueness and lack of specificity of the original Complaint. (A 16). Pursuant to an Order granting plaintiff Samuel H. Sloan an extension of time in which to file his Amended Complaint, the current appellants Samuel H. Sloan and Samuel H. Sloan & Co. (hereinafter jointly referred to as "Sloan") filed their Amended Complaint on October 22, 1974. The Amended Complaint named six new defendants including Disclosure.

Of the forty pages and three hundred and nine paragraphs of the Amended Complaint, the allegations against and references to Disclosure number six. (A 28, ¶ 11; A52, ¶ 213; A 53, ¶ s 214 and 215; A 61, ¶ 290; and A 63, ¶ 297). As against Disclosure the Amended Complaint purports to state claims arising under Sections 1 and 2 of the Sherman Act and Section 3 of the Clayton Act (15 U.S.C. §§ 1, 2 and 14 respectively) and seeks damages of $100,000. Disclosure has a contract with the SEC, pursuant to which Disclosure is given the exclusive right to perform mail order duplicating and copying services. The gravamen of plaintiffs' contentions as against Disclosure appears to be that Disclosure's contract with the S.E.C. constitutes a monopoly, the existence of which has injured Sloan because of the allegedly "excessive rates" charged. [A 53].

Disclosure served an Answer [A 113 *et seq.*] admitting that it has a contract with the Office of Records and Services of the S.E.C., denying liability and asserting the affirmative defense that the Amended Complaint failed to state a claim as to Disclosure upon which relief could be granted.

During a pre-trial conference held on January 10, 1975, a number of defendants indicated their intention to move for dismissal of the Amended Complaint. By January 31, 1975, various motions to dismiss were filed and plaintiff filed various motions. A hearing as to all motions was held on February 14, 1975, and the Court denied all plaintiffs' motions, granted all defendants' motions and dismissed the Amended Complaint as to Disclosure, *sua sponte* [A 271 *et seq.*]. Judgment was entered on February 26, 1975. Subsequently, plaintiffs' motion for reargument was denied on February 28, 1975.

Summary of Argument

1. Sloan has failed to allege the basic facts constituting the requisite elements of a cause of action under the stated sections of the Antitrust Laws as against Disclosure.

2. Sloan has not named Disclosure as a defendant for any reason other than to provide a basis for his allegations against the S.E.C. and Sloan concedes this as a fact.

ARGUMENT

I. The Amended Complaint Fails to State a Claim Upon Which Relief Can be Granted.

If it is conceded, *arguendo,* that Disclosure is a proper party to the action, the sole issue on this appeal is whether

the Court below correctly dismissed the Amended Complaint. We contend that on the law and the facts dismissal was proper on the grounds that the alleged claim is frivolous and that the Amended Complaint fails to state a claim upon which relief can be granted.

The Court below has the power to make and grant motions to dismiss *sua sponte* premised on the legal inadequacy of a complaint. *Literature, Inc.* v. *Quinn,* 482 F.2d 372 (1st Cir. 1973); *Robins* v. *Rarback,* 325 F.2d 929 (2d Cir. 1963) *cert. denied,* 379 U.S. 974 (1965); 5 Wright & Miller, *Federal Practice and Procedure: Civil* § 1357, at 593-594. Moreover, where subject matter jurisdiction is premised on Federal questions, a court may on its own motion, dismiss a complaint where that complaint fails to state facts sufficient to invoke jurisdiction under the premised Federal question. *Miclau* v. *Miclau,* 58 F.R.D. 207 (D. Puerto Rico 1972); *Foster* v. *National Biscuit Co.,* 31 F. Supp. 552 (W.D. Wash., N.D. 1940). Such was the situation below and, in the premises, Judge Griesa ruled appropriately.

A. Congressional Mandate Exempts Disclosure's Contract with the SEC from the Antitrust Laws

The antitrust laws are aimed at private, not governmental action. *Parker* v. *Brown,* 317 U.S. 341, 350-352 (1943); *E. W. Wiggins Airways Inc.* v. *Mass. Port Authority,* 362 F.2d 52, 55-56 (1st Cir.), *cert. denied,* 385 U.S. 947 (1966). Thus, when "person" is defined under these laws, the United States government is not included (see 15 U.S.C. §§ 8, 12). Consequently, when government agents and agencies act within the scope of their authority and pursuant to government policy or legislative enactment, the resultant contracts, etc. are immune from potential liability under the antitrust laws. *Parker* v. *Brown, supra;*

Union Carbide & Carbon Corp. v. *Nisley,* 300 F.2d 561, 576-577 (10th Cir. 1961), *cert. denied sub nom Wade* v. *Union Carbide & Carbon Corp.,* 371 U.S. 801 (1962).

Disclosure's contract with the S.E.C. states on its face that it was entered into pursuant to the provisions of 41 U.S.C. § 252(c)(10) relating to the procurement by the government of property and services by purchase and/or contract. In addition, 41 U.S.C. § 252(a), as it then existed, provided in relevant part as follows:

> "The provisions of this chapter shall be applicable to purchases and contracts for property or services made by—
>
> (1) The General Services Administration, for the use of such agency or otherwise; or
>
> (2) any other executive agency (except the departments and activities specified in section 2303(a) of Title 10) in conformity with authority to apply such provisions delegated by the Administrator in his discretion. Notice of every such delegation of authority shall be furnished to the General Accouting Office."

As the Section of Antitrust Law of the American Bar Association stated in its recent commentary *Antitrust Law Developments* (1975):

> "When . . . a state by valid legislative action adopts a policy restricting competition in an industry vital to its interests and substitutes a system of public regulation which specifically requires a trade restraint, the regulatory program does not conflict with the Sherman Act." (at 408).

Clearly, in the instance of the acquisition of products and services by governmental agencies, Congress recognized

the necessity of prescribing the means by which contracts for such goods and services should be entered into. Hence, by valid legislation, Congress authorized the making of the S.E.C.-Disclosure contract and thereby created an antitrust exemption for Disclosure.

B. Disclosure's Contract with the S.E.C. Does Not Constitute an Unlawful Restraint of Trade

Assuming, *arguendo,* that Disclosure's contract with the S.E.C. is not exempt from the antitrust laws, appellants have failed to allege facts constituting an illegal and prohibited restraint of trade. In the absence of such allegations, the Complaint against Disclosure must fall.

Section 1 of the Sherman Act (15 U.S.C. § 1) reads, in pertinent part as follows:

> "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations is declared to be illegal. . . ."

The operative words of this section are ". . . in restraint of trade or commerce" and it has been held that the anticompetitive effect and the surrounding circumstances of allegedly violative agreements are the determinative elements of this section. Thus, Section 1 of the Sherman Act does not prohibit all agreements which may restrain trade —every contract being in restraint of trade—but only those which are *unreasonable* by virtue of having a pernicious effect on competition and which have no redeeming virtue. *United States* v. *Arnold, Schwinn & Co.,* 388 U.S. 365 (1967); *Standard Oil Co.* v. *U.S.,* 221 U.S. 1 (1911). Therefore, the Amended Complaint must also allege that the restraint of trade complained of is unreasonable and must further demonstrate an alleged anticompetitive effect.

Sloan has not asserted that the activities of Disclosure pursuant to its contract with the S.E.C. are in restraint of trade much less an unreasonable restraint of trade, nor has Sloan alleged that potential or actual competitors have been hindered or otherwise barred from lawful competition. Appellants themselves concede that the S.E.C. makes its materials available to the public for reproduction in its own local offices—and at a lower price! Appellants Brief, p. 46. In fact, those who file various documents with the S.E.C. are the entities with the ultimate control over those materials. Disclosure's contractual rights have no effect whatsoever on the ability of appellants to obtain copies of the desired materials from their original source—those who filed them with the S.E.C. in the first instance. In sum, Disclosure's contract with the S.E.C. is roughly analogous to an exclusive agency or dealership. Such arrangements are not *per se* illegal and have been held valid where other sources of supply are open to the complaining party and where that party is not the target of a conspiracy of his competitors. *Beckman* v. *Walter Kidde & Co.,* 316 F. Supp. 1321 (E.D.N.Y. 1970), *aff'd,* 451 F.2d 593 (2d Cir. 1971), *cert. denied,* 408 U.S. 922 (1972); see also *Klor's, Inc.* v. *Broadway-Hale Stores, Inc.,* 359 U.S. 207 (1957). In the case at bar, the result should be no different.

C. Disclosure's Contract with the S.E.C. Does Not Constitute Unlawful Monopolization

Section 2 of the Sherman Act (15 U.S.C. § 2) provides in pertinent part as follows:

> "Every person who shall monopolize or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be guilty of a misdemeanor . . ."

This section therefore proscribes the process of monopolization, conspiracies to monopolize and attempts to monopolize.

Conceding, *arguendo,* that Disclosure's contract with the S.E.C. may constitute a monopoly, appellants have still failed to allege the requisite elements of a valid cause of action under this section. The United States Supreme Court has held that the offense of monopolization consists not merely of the possession of monopoly power but also the "willful acquisition or maintenance of that power as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident" *United States* v. *Grinnell Corp.,* 384 U.S. 563, 570-571 (1966).

Moreover, monopoly power as defined under Section 2 has been held as "the power to control market prices or exclude competition," *United States* v. *Grinnell Corp., supra,* at 571, "coupled with a purpose or intent to do so." *United States* v. *Paramount Pictures, Inc.,* 334 U.S. 131, 174 (1948). Hence, in *American Tobacco Co.* v. *United States,* 328 U.S. 781, 811 (1946), the United States Supreme Court stated:

> ". . . the material consideration in determining whether a monopoly exists is not that prices are raised and that competition is excluded but that power exists to raise prices or to exclude competition when it is desired to do so."

Since Disclosure operates under a contract with the S.E.C. which is finite in time, it, therefore, has no power to raise prices or to exclude competition save by the specific terms* of that contract. Moreover, in order to measure any ability

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* Appellants in fact concede that it is the S.E.C. which sets the rates of which they make complaint [Appellants' Brief, p. 46].

to lessen or destroy competition, it is necessary to determine the relevant market—either product or geographic—over which the alleged monopoly power exists. *Walker Process Equipment, Inc.* v. *Food Machinery & Chemical Corp.*, 382 U.S. 172, 177 (1965).

Appellants here have failed to allege what the courts have held to be three necessary allegations of a claim of monopolization: a relevant market, Disclosure's control of that market or even the activity monopolized. *United States* v. *Grinnell Corp., supra; U.S.* v. *E. I. Du Pont De Nemours & Co.*, 351 U.S. 377, 389, 394 (1956); *Karlinsky* v. *New York Racing Ass'n, Inc.*, 310 F. Supp. 937 (S.D.N.Y. 1970). While the failure to allege a relevant market may not be, in and of itself, a fatal defect in the Amended Complaint furnishing sufficient grounds for dismissal, the absence of any allegation of power to control prices and exclude competition has been held to be so fatally defective. *Keco Industries Inc.* v. *Borg-Warner Corp.*, 334 F. Supp. 1240, 1245-1246 (M.D. Pa. 1971). Taken cumulatively, however, all the pleading deficiencies mandate, much less allow, dismissal of the complaint and affirmance of the judgment of the lower court.

D. Disclosure's Contract with the S.E.C. Is Not Within the Parameters of Section 3 of the Clayton Act

Section 3 of the Clayton Act (15 U.S.C. § 14) reads as follows:

> "It shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies, or other commodities, whether patented or unpatented, for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia

> or any insular possession or other place under the jurisdiction of the United States, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies, or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement, or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce."

By its terms, that section prohibits restrictive and exclusive dealing agreements which restrict competition by means of requiring the buyer to agree not to use the goods or commodities of the seller's competitors. Merely stating the provisions of the section demonstrates its inapplicability to the facts presented in the complaint herein. Moreover, it has been held that this section, by its terms, is inapplicable to agreements for services. *MDC Data Centers, Inc.* v. *International Business Machines Corp.*, 342 F. Supp. 502, 504 n.2 (E.D. Pa. 1972). Since Disclosure's contract with the S.E.C. is admittedly one for services, the Amended Complaint fails to state a cause of action under the Clayton Act and must fall.

E. Appellants Lack Standing to Sue

Section 4 of the Clayton Act (15 U.S.C. § 15) provides in relevant part as follows:

> "Any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent . . ."

In order for Sloan to properly sue and claim damages from Disclosure under this Section, they must allege that they have sustained injury in their business or property as a proximate result of the particular acts of which they complain. This Court has held that in order to have standing under this section a plaintiff must be within the "target area" of the alleged violations; *i.e.,* plaintiff must be the person against whom the conspiracy is aimed, such as a competitor of the person sued. *Calderone Enterprises Corp.* v. *United Artists Theatre Circuit, Inc.,* 454 F.2d 1292 (2d Cir. 1971), *cert. denied* 406 U.S. 930 (1972); *Billy Baxter, Inc.* v. *Coca-Cola Co.,* 431 F.2d 183 (2d Cir. 1970), *cert. denied,* 401 U.S. 923 (1971). The injury must also be a direct rather than incidental result of the alleged antitrust violation. *SCM* v. *Radio Corp. of America,* 276 F. Supp. 373 (S.D.N.Y. 1967), *aff'd,* 407 F.2d 166 (2d Cir.), *cert. denied,* 395 U.S. 943, *reh. denied,* 396 U.S. 869 (1969).

Sloan did not allege that they are the persons against whom the alleged violations are aimed. Nor do they allege that they are engaged in the business of reproducing materials or documents. [A 26-27, ¶ s 3 & 4]. Indeed, Sloan did not ever allege that he has suffered any damages by reason of the contract or its allegedly "excessive rates." Appellants allege only the existence of what they characterize as "excessive rates." Hence, appellants have no standing to bring suit against Disclosure by reason of alleged violations of the antitrust laws and the Amended Complaint was properly dismissed.

II. Appellants Concede That Disclosure Is Not a Real Party Defendant.

One basic and undeniable fact of this appeal is that Sloan concedes in his brief to this Court that it is the S.E.C.

alone against which he allegedly has a complaint. While stating that Disclosure is not a "tag along" party, Sloan proceeds to demonstrate by his argument that this is precisely the case. Sloan states that Disclosure's activities (performing its contractual obligations?) "constitute an intergal (sic) part of a reprehensible scheme to expand the power of the S.E.C. at the expense of individuals such as Sloan." Appellants' Brief, p. 46. Moreover, Sloan attacks the S.E.C., not Disclosure, for allegedly legislating by requiring the payment of a fee of $.15 per page for the duplication of documents. Hence, it appears that it is not even the amount of the fee to which Sloan takes exception but the existence of any fee at all! This argument is immediately followed by the assertion of the importance of appellants' case against Disclosure, buttressed by the recitation of the undisputed facts that the reproduction of all the documents annually filed with the S.E.C. amounts to substantial sums. Clearly, the end result of this reasoning is nonsensical. Sloan would apparently have the S.E.C. maintain its own duplicating facilities to provide copies to the public—presumably free of charge to the recipient but at the taxpayer's cost. Regardless of whether Sloan's desires are practical or reasonable, the fact that the S.E.C. does not operate in accordance with them, but by means of a contract with Disclosure, is not a proper basis for a claim against Disclosure.

Finally, Sloan admits that the only reason Disclosure is a party to this action is that the "broad thrust of this lawsuit involves the question of the constitutionality of the power of the S.E.C. to regulate and suspend trading in securities." Appellants' Brief, p. 47. By a grossly circuitous line of reasoning, appellants then arrive at the conclusion that Disclosure is a necessary party because it provides the means of distributing to the public information filed with

the S.E.C., which distribution is the purpose of the S.E.C.'s filing requirement. Ultimately, appellants' claim is that Disclosure is a named defendant because it would be adversely affected by a court ruling in favor of appellants. This argument of the "necessity" of Disclosure as a party was raised in appellants' motion for reargument in the Court below. Judge Griesa rejected that argument.

The fact is that of appellants' sixty-eight page brief only approximately four pages are devoted to Sloan's claims against Disclosure, and in those pages [Appellants' Brief, pp. 45-48] appellants fail to set forth any substantive claim. This fact is a product of neither inadvertence nor lack of ingenuity, but rather indicates the correctness of Judge Griesa's finding that the claims against Disclosure were frivolous and warranted dismissal of the Amended Complaint.

CONCLUSION

The judgment of the District Court should be affirmed as to Disclosure Inc.

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